

**HB 403 TESTIMONY
SENATE JUDICIARY COMMITTEE
WEDNESDAY, APRIL 3, 2013**

Mr. Chairman and members of the Senate Judiciary Committee, for the record, my name is Shirley Faust, F-A-U-S-T, and I am the Missoula County Clerk of District Court. I am also a member of the Legislative Committee of the Montana Association of Clerks of District Court.

I am here today to ask for your support for HB 403, a bill submitted at the request of the Montana Association of Clerks of District Court. I want to thank Representative Hill for sponsoring this bill on our behalf!

HB 403 seeks to clarify fees of the Clerk of District Court. Current statutes were written at a time when the process for maintaining court records was 100% manual. In the last 10-20 years many of the processes by which records of the district court are recorded and maintained have moved from manual to automated processes. Today's technological advances provide for statutory functions such as name indexes, registers of action, judgment dockets, etc. of district court records to be maintained electronically within a case management system. The time has arrived for us to propose changes in statute which take into account our 21st century automated processes. It is important to note that Title 7, Chapter 5, Section 2133, MCA, already provides for a convenience fee for electronic county government services. HB 403 therefore simply seeks to clarify this intent by including fees regarding electronic exchanges under the statutes relative to fees collected by the Clerks of District Court.

The statutes relative to copy fees were written at a time when the only means by which a copy could be provided was by paper. Today, however, documents are being

imaged and stored electronically, providing Clerks with the ability to provide copies of documents by electronic means, primarily email and fax. For many attorneys and members of the public, the electronic copy is the preferred method by which to receive a document. Because there are costs associated with imaging and storing images of documents, a fee for the service is still appropriate and is allowable under §7-5-2133, MCA and is currently being charged by 40 of the 50 Clerks of District Court who responded to a survey.

However, the only statute that provides for Clerks of District Court to collect a fee for copies is under §25-1-201(1)(d), MCA, which is

- d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;**
- (ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;**

We believe that because this section of law is specific to copies provided by the Clerk of District Court, this is the only fee we can charge by law. HB 403 therefore seeks to add language to provide for a reduced fee for copies provided by electronic means. The fee we are proposing is a flat rate of \$.50/page. So a 10 page document provided by hard copy would still cost a recipient \$10.00. However, under the proposed language, a 10 page document provided by fax or email would cost the recipient \$5.00. This demonstrates a 50% cost savings. The cost savings on a document 11 pages or

more in length would be \$5.00 and of course the percentage of savings decreases in direct proportion to the number of pages contained within a document.

I recently surveyed the Clerks of District Court in Montana to get an idea of just how many documents we image statewide on an annual and daily basis. The results are contained within the Fact Sheet provided. The results of the 50 clerks who responded reflect an overall increase of 103,250 documents from 2010 to 2012. This equates to a 16% increase. These numbers are expected to continue to increase as more and more clerks make the decision to scan all document filings.

As previously stated, there is a cost associated with scanning and storing document filings. Costs include staff time, purchasing and maintenance costs for scanners, purchasing and maintenance costs for servers on which to store images, and also email servers which are robust enough to accommodate all of the incoming and outgoing emails with document attachments.

The staff costs alone can be a bit surprising when put into perspective. For example, in 2012 my system reflects 85,513 imaged documents. In 2012 there were 250 business days – I personally counted them – so that equates to an average of 342 document images per day. The length of time to image and index a document varies depending upon the number of pages in each document. But for the sake of this example and easy math, let's say each document took only one minute to image and index – and I have to say that is a low number. It would take one of my staff members 342 minutes each day to do nothing but image documents. This equates to 5.7 hours per day out of an eight hour day. If the hourly wage of this employee were \$10.00/hour, the cost would be \$57.00 per day. This cost reflects only the hourly wage and does not

account for the cost of fringe benefits for the employee. Multiply the cost per day of \$57.00 times 250 business days and the total cost of staff time to image documents in my office in 2012 comes to \$14,250.00. And I can assure you this is a low number. So when somebody suggests to you that the clerk's office only has to push a button to send a document by email, (and seriously, how hard could that be?), they have not considered the staff time involved to scan every document into our system. Again, staff time is only one of the costs associated with imaging and storing documents. But imaging documents is an important function which ensures that the documents are available for the public, attorneys, title companies and others to view on the public computer terminals in our offices and for those documents to be quickly and efficiently provided by Clerks of Court by electronic means to those who request copies.

HB 403 also seeks to clarify that a fee for documents submitted to the Court for filing by facsimile or email must be paid by the filing party. Because many of the local rules of the judicial districts throughout the State of Montana allow for documents to be filed by facsimile or email, the responsibility for printing the paper documents has shifted from the filing party to the Clerk of Court, or the taxpayer. Preparing and printing documents is a cost of litigation and we do not believe that it was ever the intent of the legislative body to place litigation costs on local governments. This cost should remain with the filing party. Of the 50 clerks who responded to my survey, 38 clerks (76%) indicated that they currently charge a fee for incoming fax and email filings. Our proposed change under §25-1-201(1)(r) seeks to provide for a reduced fee of \$.50/page, compared to the current fee under §25-1-201(1)(d) of \$1.00/page for the first 10 pages and \$.50/page for each additional page.

Fifty (50) clerks also responded to a survey from me requesting an estimate of the monthly volume of incoming fax and email filings in each county. The results of that survey are reflected in the Fact Sheet provided. Keep in mind that these are estimates because emailing and fax filings are not tracked within our case management system. The results show that 20% of the responding clerks indicated a volume at or greater than 100 document filings per month and 22% between 50 & 99 document filings per month. So in other words, 42% of the clerks estimate that they receive more than 50 documents per month for filing by email or fax.

One important point to understand is that District Courts in Montana are still paper courts and the official court record is the paper file. This means there must be a paper original of every document filing in the court file. Additionally, every document received for filing must be stamped with the date filed and must also be assigned a sequential document number. All incoming fax and email filings must therefore be printed, stamped with the date of filing, indexed into the register of actions in the case management system, and assigned a document sequence number which must be written on the document. The document is then imaged and placed in the court file. Our hope is that within the next five years or so all courts will become electronic courts. When we are electronic courts, the office record will be the electronic record and electronically filed documents will be stamped with an electronic stamp by the e-filing system. However, until we are electronic courts, we do not have the technology to electronically stamp documents with the filed date. This means we must print the paper document and manually stamp the filed date directly on the document.

HB403 also seeks to clarify that copy fees apply to all criminal and civil cases. Because the fees of the Clerk of District Court are specified under Title 25, MCA, which is Civil Procedure, it is the opinion of some that the copy fees do not apply to criminal proceedings. If this were true, it would mean that media outlets and members of the public across Montana, the United States and the world could obtain a copy of every document in every criminal case at no charge. This is not the practice of the clerks but was brought to our attention by a member of the public so adding the language "in all criminal and civil proceedings" at lines 26 & 30 of Section 2 on page 1 of HB 403 clarifies that the copy fees apply to copies of documents in all case types. It just seemed worthwhile to address that issue in this bill.

Section 4 of HB 403 further clarifies that the fee for electronic exchanges applies to governmental entities under §25-10-405, MCA. I want to be clear that this section of law already specifies that governmental entities, when prosecuting or defending an action on behalf of a government entity, are not exempt from fees for photocopies, postage and handling, certifications, authentications, and record searches. This is already the law so it therefore seems appropriate that the fee for electronic exchanges should also be included. And in order to be consistent, Section 1 of HB 403 clarifies under §7-4-2516, MCA that public officers are also not exempt from Clerk of Court copy fees and fees for electronic exchanges. Likewise, Section 3 of HB 403 clarifies that indigent litigants who are granted a waiver of fees under §25-10-404, MCA are also not exempt from Clerk of Court copy fees and fees for electronic exchanges.

I also did some research regarding the fiscal note. Forty-eight (48) of fifty (50) clerks who responded to a survey indicated that they do provide copies to CSED, but

primarily by hard copy because CSED requires document certification. We would certainly be willing to provide more documents by email. Additionally, I found that 33 of 48 clerks currently charge CSED for copies at the statutory rate, as well as for postage, while 16 clerks do not charge CSED. I visited with the CSED Budget Bureau Chief who informed me that they understood that their copy costs could, in fact, be reduced if they were to receive more copies by email because of the reduced fee and because of the savings in postage costs. However, because they were uncertain as to whether or not the 16 clerks who currently do not charge for copies would begin charging after the passage of this bill, they estimated a cost increase rather than a cost savings. I was also informed that CSED does not have any concerns with the fiscal note.

I hope I've provided you with enough information for you to understand that this bill really is necessary. On the surface it may appear that HB 403 simply creates a new fee but in reality that new fee represents a reduced fee for electronic exchanges.

I again ask for your support. Please vote "do pass" on HB 403.

I sincerely thank you for your time and I will be available to answer questions.